

PATTI GOLDMAN (WSB #24426)  
AMY WILLIAMS-DERRY (WSB #28711)  
Earthjustice  
705 Second Avenue, Suite 203  
Seattle, WA 98104  
(206) 343-7340  
(206) 343-1526 [FAX]  
pgoldman@earthjustice.org  
awilliams-derry@earthjustice.org

THE HONORABLE JOHN C. COUGHENOUR

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

WASHINGTON TOXICS COALITION; ) Civ. No. C04-1998C  
NORTHWEST COALITION FOR )  
ALTERNATIVES TO PESTICIDES; )  
NATIONAL WILDLIFE FEDERATION; )  
DEFENDERS OF WILDLIFE; NATURAL ) DECLARATION OF JEFFREY MILLER  
RESOURCES DEFENSE COUNCIL; )  
CENTER FOR BIOLOGICAL DIVERSITY; )  
PACIFIC COAST FEDERATION OF )  
FISHERMEN'S ASSOCIATIONS; )  
INSTITUTE FOR FISHERIES RESOURCES; )  
and HELPING OUR PENINSULA'S )  
ENVIRONMENT, )

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF )  
INTERIOR; UNITED STATES )  
DEPARTMENT OF FISH AND WILDLIFE )  
SERVICE; UNITED STATES )  
DEPARTMENT OF COMMERCE; and )  
NATIONAL MARINE FISHERIES )  
SERVICE, )

Defendants,

1 )  
 2 and )  
 3 )  
 4 CROPLIFE AMERICA, WASHINGTON )  
 5 FRIENDS OF FARMS AND FORESTS, )  
 6 WASHINGTON STATE POTATO )  
 7 COMMISSION, NATIONAL POTATO )  
 8 COUNCIL, WASHINGTON STATE FARM )  
 9 BUREAU, IDAHO FARM BUREAU )  
 10 FEDERATION OF WHEAT GROWERS, )  
 11 WASHINGTON GOLF COURSE )  
 12 SUPERINTENDENTS ASSOCIATION, HOP )  
 13 GROWERS OF WASHINGTON, AND )  
 14 WASHINGTON STATE HORTICULTURAL )  
 15 ASSOCIATION, )  
 16 )  
 17 Defendant-Intervenors. )  
 18 )

19 I, Jeffrey Miller, do hereby declare as follows:

20 1. I have personal knowledge of the following and could competently testify thereto  
 21 if called as a witness.

22 2. I live in Berkeley, California.

23 3. I have been a member of the Center for Biological Diversity (“Center”) since  
 24 1995. I am the Bay Area Wildlands Coordinator for the Center in the San Francisco Bay Area  
 25 office, located in San Francisco, California. My duties, among other things, include research,  
 26 assembling listing petitions, community organizing, and other work to protect and restore  
 endangered and threatened species and their habitat in California.

4. The Center is a non-profit environmental organization whose mission is to protect  
 endangered species and wild places through science, policy, education, and environmental law.  
 The Center has over 13,000 members, over 4,400 of whom live in California, and many of whom  
 recreate in the historic and present range of California red-legged frogs. I rely upon the Center to  
 represent my interests in protecting endangered species and their habitat.

1           5.       The Center and its members have an ongoing interest in protecting the California  
2 red-legged frog, and dozens of other species listed as threatened or endangered under the  
3 Endangered Species Act (“ESA”). On March 24, 1999, the Center and other environmental  
4 groups sued the U.S. Fish and Wildlife Service (“FWS”) to compel the agency to designate  
5 critical habitat for the frog under the ESA. In 1999, the court ordered the agency to make a  
6 prudency determination for designating critical habitat for the California red-legged frog by  
7 August 2000, and to issue a final rule by December 29, 2000.

8           6.       On September 11, 2000, FWS published a proposal to designate critical habitat  
9 for the California red-legged frog and opened a comment period on the proposal. The Center, its  
10 members, and staff submitted comments and attended public meetings in support of designating  
11 critical habitat for the California red-legged frog. I wrote comments on the critical habitat  
12 proposal on behalf of the Center, organized community members to attend and speak at the  
13 hearings and write letters supporting the critical habitat designation, and personally spoke at the  
14 hearing in Dublin, California.

15           7.       On March 13, 2001, the Fish and Wildlife Service designated over 4.1 million  
16 acres as critical habitat for the California red-legged frog. The designation included 29 separate  
17 areas that span 28 California counties, including 500 miles of streams and rivers.

18           8.       I derive recreational, scientific, aesthetic, educational, moral, spiritual, and  
19 conservation benefits from visiting, observing, and restoring aquatic ecosystems in California,  
20 including areas that are habitat for the California red-legged frog.

21           9.       I personally visit California red-legged frog habitat about ten to twenty times each  
22 year to hike, swim, backpack, recreate, observe wildlife, work on habitat restoration projects, and  
23 enjoy the surroundings. I live within a three-hour drive of over half of the critical habitat for the  
24

1 California red-legged frog. I also live within a three-hour drive of at least 30 sites where  
2 California red-legged frogs have been eliminated from their historic range and are no longer  
3 present. I often visit and backpack in the present and historic habitat of the California red-legged  
4 frog, including coastal habitat, the Coast Ranges, the Sierra Nevada foothills, and the Central  
5 Valley. Specifically, I recreate around the wetlands, ponds, tarns, springs, wet meadows, and  
6 streams of these areas. For example, I have visited red-legged frog habitat at Pescadero Marsh,  
7 Elkhorn Slough, Point Reyes, Sunol Regional Wilderness, Ohlone Regional Wilderness, Mt.  
8 Diablo State Park, Pleasanton and Livermore Creeks, Sycamore Valley Regional Preserve, and  
9 Pinole Creek within the last five years. During these trips I often observed California red-legged  
10 frogs in their natural habitats, and their existence provided me with recreational, scientific,  
11 aesthetic, educational, moral, spiritual, and conservation benefits and enjoyment. When I failed  
12 to find California red-legged frogs because they were absent from their historical habitats, my  
13 enjoyment of the trip was greatly diminished.

14 10. I often lead trips to take other conservationists to see red-legged frogs in their  
15 native habitat and have worked to protect and restore red-legged frogs and their habitat in  
16 numerous sites throughout the Bay Area where they are threatened by development and other  
17 human impacts, including the introduction of pesticides into their habitat.

18 11. I intend to keep visiting the current and historic habitats of the California red-  
19 legged frog this year, including the above-mentioned areas, and to continue using them for the  
20 purposes described above on an on-going basis in the future.

21 12. According to scientific literature I have read, the California red-legged frog has  
22 disappeared from more than 70% of its historic localities throughout California. The use of  
23 pesticides upwind of California red-legged frogs has been cited as a likely cause of the decline in  
24

1 the species and appears to be correlated with the extirpation of the species from areas downwind  
2 of agricultural uses.

3 13. The continued existence of the California red-legged frog, and other listed  
4 species, is jeopardized by the actions of NOAA Fisheries and FWS (collectively, the “Services”).  
5 The Services have violated the ESA by delegating to EPA their mandatory ESA duties to ensure  
6 that federal actions in registering and re-registering pesticides do not take listed species or  
7 destroy or adversely modify their habitat. The Center and its members have an interest in  
8 maintaining listed species and their habitat, and are harmed by the Services’ approval of EPA’s  
9 pesticide risk assessment methods, which are not adequately protective of the California red-  
10 legged frog and other listed species. The Services violated the ESA when they approved EPA’s  
11 pesticide risk assessment methods, because they fail to account for the cumulative effects of  
12 pesticides on listed species, or the sublethal effects of pesticides that impair endangered species’  
13 abilities to resist disease and predation in the wild. The Services and EPA’s new pesticide  
14 consultation rule weakens protections for listed species under the ESA and federal environmental  
15 laws, and is causing an overall decline in the health of the aquatic ecosystems upon which  
16 California red-legged frogs and other species depend.

17 14. The actions of the Services in weakening protections for endangered species from  
18 pesticides will cause the California red-legged frog to continue to decline and to likely become  
19 extinct. This would deprive me of the benefits I currently enjoy from the existence of this  
20 species. I also am concerned that pesticide use that degrades the red-legged frog’s aquatic  
21 habitat throughout California will also lead to the decline or extinction of other species that rely  
22 on this habitat. This would reduce my ability to use and enjoy such areas. My knowledge of the  
23 decline of the red-legged frog and the deterioration of its habitat has generally weighed on my  
24  
25

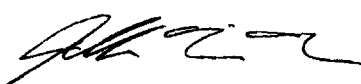
1 mind and, despite my pleasure in observing and studying this species and its habitat during my  
2 visits to its current and historical habitat, my concern for its survival detracts from my enjoyment  
3 of these experiences.

4 15. In April 2004, the Center signed on to comments written by Earthjustice and the  
5 Washington Toxics Coalition and submitted to the Services in opposition to their then-proposed  
6 rule under the ESA's counterpart regulations to weaken protections for endangered species from  
7 pesticides.

8 16. I firmly believe that no native amphibians, including the California red-legged  
9 frog, should be extirpated by human activities if it is within human powers to prevent it. I also  
10 believe that complete and timely implementation of the ESA for the benefit of such imperiled  
11 species in general, and for the California red-legged frog in particular, is essential to prevent  
12 their extinction.

13 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
14 and correct to the best of my knowledge.

15 Executed this 12<sup>th</sup> day of May, 2005 in Berkeley, California.

16  
17   
18 \_\_\_\_\_  
Jeffrey Miller